

THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

WHITNEY BILYEU, individually and as Chair §
of the LIBERTARIAN PARTY OF TEXAS; §
MARK ASH; STEPHANIE BERLIN; JOE §
BURNES; ARTHUR DIBIANCA; KEVIN §
HALE; DESARAE LINDSEY; ARTHUR §
THOMAS IV; MARK TIPPETTS; and §
LIBERTARIAN PARTY OF TEXAS, §

Plaintiffs,

1:21-CV-01089-RP

v.

JANE NELSON, in her official capacity as the §
Secretary of State of the State of Texas, and §
DAVE NELSON, in his official capacity as the §
Deputy Secretary of State of the State of Texas, §

Defendants.

**Plaintiffs' Unopposed Motion to File Corrected Response
to Defendants' Motion for Summary Judgment**

Plaintiffs file their *Unopposed Motion to File Corrected Response to Defendants' Motion for Summary Judgment*.

Introductory Statement

1. Plaintiffs' ask the Court's leave to file a corrected response to *Defendants' Motion for Summary Judgment*. (Dkt. 87) Defendants filed their motion on April 18, 2025. Under Local Rule CV-7(D), Plaintiffs' response was originally due May 8, 2024, and the Court extended that deadline to through and including June 13, 2024.

2. When filing their response, Plaintiffs kept incurring technical error when submitting the papers. Fortunately, Plaintiffs' counsel was able to get the response itself (filed by the deadline (Dkt.91.)), but the exhibits standing alone were again rejected. (*See* Ex A (post-deadline attempt).) Plaintiffs' counsel immediately created a Dropbox folder, loaded it with the exhibits and the error message, and then sent that to Defendants, to mitigate any possible prejudice. Plaintiffs' counsel thinks the errors were due to a PDF issue resulting from PDFs being generated from Microsoft Word in MacOS, although this has never before been an issue.¹

3. The following day, Plaintiffs' counsel's wife pointed out that on page 10 of the response, there was drafting error in the last sentence: "Those bills did pass[,]" should be "Those bills did *not* pass." (emphasis added)

4. Plaintiffs ask the Court order the Clerk to docket the corrected Response to Defendants Motion for Summary Judgment, including its exhibits (Dkt. 92) and strike the originally filed response. The only differences between the motion that was timely filed and these papers is the correction on page 10, changing the dates on the signature block and certificates, and the inclusion of the exhibits, which were provided to Defendants within minutes after the filing.

Argument & Authority

5. Plaintiffs ask to extend the Local Rules CV-7(D) & CV-15 deadlines for them to respond to *Defendants' Motion for Summary Judgment* to June 23, 2025. A court may grant a request to extend time for good cause and if there is excusable neglect. *See* Fed. R. Civ. P. 6(b)(1)(A). The standard is broadly construed in favor of the moving party, particularly when there is no prejudice the opposing party. *See, e.g., L.A. Pub. Ins. Adjusters, Inc. v. Nelson*, 17 F.4th

¹ *See* PDF-Related Functionality for Public Filers in NextGen CM/ECF at 6–7, last visited June 16, 2025.

521, 524 (5th Cir. 2021) (“If done prior to the expiration of the time limit at issue, a court may extend the period for any reason . . .”).

6. Good cause and no excusable neglect exists here for two reasons. First, Plaintiffs’ counsel failure to timely file was due to a technical issue that had never-before arisen, the response itself was timely filed, and Plaintiffs’ counsel immediately took steps to mitigate any prejudice to Defendants. Second, this motion is unopposed by Defendants.

7. Defendants will not be prejudiced by this delay.

Prayer

FOR THESE REASONS, Plaintiffs respectfully request that the Court GRANT this motion, order the Clerk to docket Plaintiffs’ corrected *Response to Defendants’ Motion for Summary Judgment* (Dkt. 92), strike the original *Response to Defendants’ Motion for Summary Judgment* (Dkt. 91), enter the attached order, and grant them all relief, in law or in equity, to which they are justly entitled.

Dated: June 16, 2025

Respectfully submitted,

By: /s/ Jared G. LeBlanc

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Certificate of Conference

I certify that I emailed Defendants' counsel on June 14, 2025 about this motion, and he confirmed that Defendants are not opposed.

/s/ Jared G. LeBlanc

Jared G. LeBlanc

Certificate of Service

The undersigned hereby certifies that a true and correct copy of the foregoing was served upon Defendants, by and through their counsel of record, electronically through the Clerk's ECF system on June 16, 2025.

/s/ Jared G. LeBlanc

Jared G. LeBlanc